SUBJECT INDEX

	Page
Jurisdictional Statement	2
Statement of Proceedings Below	2
Argument	4
I.	
The Subject Matter Determined by Judgment Herein Is Purely a Matter of State Law	4
II.	
No Federal Questions Decided or Involved Herein	4
A. No Constitutional or Treaty Rights Are Involved or Decided Herein	4
B. Interpretation of Yorba's Intention as Expressed in His Deed to Wolfskill Does Not "Turn Upon a Question of Federal Law"	8
Conclusion	11
Appendix:	
Summary Judgment	App. p. 1
Deed	App. p. 3
United States Patent	App. p. 6

TABLE OF AUTHORITIES CITED

Cases	Page
Adam v. Norris, 103 U.S. 591, 26 L. Ed. 583	6
Ames v. The Irvine Company, 245 A.C.A. 969	2, 10
Baker v. Cummings, 181 U.S. 117, 45 L. Ed. 776, 21 S. Ct. 578	10
California v. Jackson, 212 U.S. 233, 28 L. Ed. 712, 5 S. Ct. 113	7, 8
California Powder Works v. Davis, 151 U.S. 389, 38 L. Ed. 206, 14 S. Ct. 350	7, 11
Crane v. Salmon, 41 Cal. 63	7
De Guyer v. Banning, 167 U.S. 723, 42 L. Ed. 340, 17 S. Ct. 937	9
Devine v. Los Angeles, 202 U.S. 313, 50 L. Ed. 1046, 26 S. Ct. 652	7
Gragg v. Culp, 198 Cal. 579	9
Hardin v. Jordan, 140 U.S. 371, 35 L. Ed. 428, 11 S. Ct. 808	7
Hooker v. Los Angeles, 188 U.S. 314, 47 L. Ed. 487, 23 S. Ct. 395	7
Last Chance Mining Company v. Tyler Mining Company, 157 U.S. 684, 39 L. Ed. 859, 15 S. Ct. 733	10
Los Angeles v. Los Angeles Farming and Milling Company, 152 Cal. 645, 93 Pac. 869, 217 U.S. 217, 54 L. Ed. 736, 30 S. Ct. 452	4, 5
Los Angeles Farming and Milling Company v. Thompson, 180 U.S. 72, 45 L. Ed. 432, 21 S. Ct. 289, 11 Cal. 594	9
Mace v. Merrill, 199 U.S. 581, 30 L. Ed. 503, 7 S. Ct. 330	7

Page

Martelli v. Pollock, 162 Cal. App. 2d 655 2

McStay v. Friedmann, 92 U.S. 723, 28 L. Ed. 767 8

Poppe v. Langford, 104 U.S. 770, 50 L. Ed. 1123, 80 A.L.R. 439 8

Romie v. Cassanova, 91 U.S. 379, 23 L. Ed. 374 8

Sain v. Cypress Creek Drainage District, 268 U.S. 675 11

Touchard v. Crowe, 20 Cal. 150 7

Townsend v. Greeley, 5 U.S. 326, 18 L. Ed. 547 7

United States v. Coronado Beach Co., 225 U.S. 472, 65 L. Ed. 736, 41 S. Ct. 376 7

United States v. Flint, et al., 25 Fed. Cases 1108 8

United States v. Hancock, 133 U.S. 193, 33 L. Ed. 601 9

Rules

Federal Rules of Civil Procedure, Rule 56 3

Statutes

California Code of Civil Procedure, Sec. 437(c) .. 3

California Code of Civil Procedure, Sec. 983 2

Restatement, Conflict of Laws, Sec. 214 4

United States Code, Title 28, Sec. 1257(3) 2, 4

Textbooks

9 Statutes at Large, Chap. 41, p. 631 5

9 Statutes at Large, p. 922 5

IN THE

Supreme Court of the United States

October Term, 1967
No. 1316

LYMAN W. AMES and MILDRED YORBA SERRANO, Administrators of the Estate of Teodocio Yorba, Deceased,

Petitioners and Appellants,

vs.

THE IRVINE COMPANY, a corporation,

Defendant and Respondent.

Answer to Petition for a Writ of Certiorari to the Fourth District Court of Appeal, State of California.

To Earl Warren, Chief Justice; and to the Associate Justices of the Supreme Court of the United States of America:

The respondent, The Irvine Company, prays that appellants' Petition for a Writ of Certiorari for review of the judgment entered in this cause be denied on the grounds, each and all, that:

1. The State Courts below did not decide a federal question;
2. There are no federal questions of substance involved in the within action;
3. Jurisdiction of this Court is lacking to review by certiorari.

Jurisdictional Statement.

Petitioners seek review of a summary judgment[1] declaring that the estate of Teodocio Yorba, deceased, and the heirs of the decedent have no right, title or interest in 47,226.61 acres of land situated in Orange County, California. [Clk. Tr. Vol. 2, pp. 161-167; set forth in appendix hereto.]

The Trial Court entered this judgment November 24, 1964 and thereafter petitioners duly appealed to the Court of Appeal, Fourth Appellate District, Division One, State of California, which affirmed the judgment on December 5, 1966. The opinion of the Court of Appeal is published in the official Advance California Appellate Reports as *Lyman W. Ames, etc., et al. v. The Irvine Company,* 246 A.C.A. 969. On February 1, 1967, the Supreme Court of California denied appellants' Petition for Hearing.

Petitioners claim jurisdiction to this Court under United States Code, Title 28, Section 1257(3).

Statement of Proceedings Below.

Petitioners, as administrators of the estate of Teodocio Yorba, deceased, filed their action in the Superior Court, State of California, County of Orange, seeking a declaratory judgment to the effect that the estate and the heirs of Yorba were the owners of an undivided 7/11ths of a tract of land described by a patent issued by The United States of America dated February 1, 1868. [Clk. Tr. Vol. 1, pp. 1-21.]

---

[1]Petitioners' Appendix B of their Petition sets forth the Order granting the motion which is not appealable (C.C.P. 983; *Martelli v. Pollock,* 162 Cal. App. 2d 655) rather than the judgment entered thereon, which is set forth in the appendix hereto.

Respondent, in turn, made its motion for summary judgment[2] contending that as a matter of law by virtue of his deed executed December 3, 1860 to one William Wolfskill (respondent's predecessor in title) Teodocio Yorba, and hence petitioners herein, had no right, title or interest in the lands in dispute. This motion was made upon affidavit incorporating certified recorded instruments of record constituting respondents chain of title including the entire United States Patent[3] and the deed from Teodocio Yorba, *et ux.* to William Wolfskill.[4] [Clk. Tr. Vol. 1, pp. 22-31.]

Petitioners, in turn made a motion for summary judgment on their behalf or in the alternate a motion for judgment on the pleadings, contending that as a matter of law they were entitled to 7/11ths of the lands. Their motion set forth various certified copies of prior mortgages, maps, the deed in question, and the Patent. [Clk. Tr. Vol. 1, pp. 50-66.]

The trial Court granted respondent's motion and denied petitioners' motions, and entered judgment in favor of respondent.

---

[2]California Code of Civil Procedure, Sec. 437(c) provides for summary judgment in cases where there are no substantial triable issues of fact. This provision is similar to that provided by the Federal Rules of Civil Procedure, R.C.P. 56.

[3]This Patent is set forth in the appendix hereto excepting the lengthy legal description.

[4]The deed is set forth in the appendix herto.

ARGUMENT.

I.

The Subject Matter Determined by Judgment Herein is Purely a Matter of State Law.

The precise issue presented by the respective parties herein and determined by the Courts below is whether the deed executed by Yorba, *et ux.* to William Wolfskill, dated December 3, 1860, conveyed only four leagues of land out of an asserted eleven leagues as contended by petitioners, or did this deed convey all of the lands embraced by the original Mexican grant as confirmed by the United States District Court and the ultimate Patent, as contended by this respondent, and so concluded by all courts below.

The subject in controversy is the deed of Yorba voluntarily executed by him in California, concerning California land. It is axiomatic that the interpretation and the effect of this deed is governed by the law of California. (*Los Angeles v. Los Angeles Farming and Milling Company,* 152 Cal. 645, 93 Pac. 869, 217 U.S. 217, 54 L. Ed. 736, 30 S. Ct. 452; Restatement, Conflict of Laws, Sec. 214.)

II.

No Federal Questions Decided or Involved Herein.

A. No Constitutional or Treaty Rights Are Involved or Decided Herein.

Petitioners assert jurisdiction to this court under United States Code, Title 28, Sec. 1257(3), and claim their property rights were secured under the Treaty of Guadalupe Hidalgo, February 2, 1848, and the implementing congressional act thereto which were violated

by the proceedings of the state court in contravention to their constitutional rights. Such questions simply do not exist in this case.

The record herein is clear that the matter at issue and determined was the effect of the deed of Yorba, *et ux.* to William Wolfskill, dated December 3, 1860. Neither party to this action attacks or questions the validity of the Treaty of Guadalupe Hidalgo, February 2, 1848 (9 Stats. 922), nor implementing congressional legislation thereto being the Act of Congress, March 3, 1851, entitled "An act to ascertain and settle private land claims in the State of California" (9 Stats. Ch. 41, p. 631), nor does any party hereto question the validity of the original Mexican grant or the confirmatory patent thereof.

As a matter of record fact, *both parties hereto claim title under the confirmatory patent of the original Mexican grant.*

No such federal questions are involved under such circumstances in dealing with confirmatory patents of Mexican grants, in that the United States of America never had true ownership of the property to begin with and in no proper sense was the grantor or the source of such a title. Thus in *Los Angeles Farming and Milling Company v. Los Angeles,* 217 U.S. 217, 54 L. Ed. 736, 30 S. Ct. 452, the Supreme Court of the United States had under consideration a proceeding to review a decision of the Supreme Court of the State of California. That decision had affirmed a judgment quieting the title to the City of Los Angeles to use certain waters of the Los Angeles River being appurtenant to patented lands. Both the city and company claimed under patents issued by the United States con-

firming certain Mexican grants. In the proceeding before the United States Supreme Court, it was asserted that several federal questions were involved, including the claim that the California courts had interfered with the disposition of public lands by the United States, and that federal rights are involved under the Treaty of Guadalupe Hidalgo and the implementing legislation thereto. The Supreme Court dismissed the writ for want of jurisdiction. In so doing, it discussed at length the question as to what law governs contesting parties under federal patents confirming Mexican grants, and held that state and not federal law governs. Quoting from *Adam v. Norris,* 103 U.S. 591, 26 L. Ed. 583, the court stated:

> "But the United States, in dealing with parties claiming under Mexican grants, lands within the territory ceded by the Treaty with Mexico, never made pretense that it was the owner of them. When, therefore, guided by the action of the tribunals established to pass upon the validity of these alleged grants, the government issued a patent, it was in the nature of a quitclaim,—an admission that the rightful ownership had never been in the United States, but had passed at the time of the cession to the claimant, or to those under whom he claimed . . ."
>
> "It is perhaps more accurate to say that the action of the United States in such cases is a confirmation rather than a quitclaim." (217 U.S. p. 227.)
>
> "The contentions as to the supposed rights derived under that treaty and act have been before this court in a number of cases, in which it has

been uniformly held that rights alleged to have arisen thereunder, in the manner claimed by the present plaintiff in error are not rights of a federal origin which, when denied, lay the basis for review and reversal of the judgment of the State Court." (217 U.S. p. 227.)

The foregoing rule has been reiterated in a number of cases before this Court. (See *Townsend v. Greeley,* 5 U.S. 326, 18 L. Ed. 547; *Hooker v. Los Angeles,* 188 U.S. 314, 47 L. Ed. 487, 23 S. Ct. 395; *Devine v. Los Angeles,* 202 U.S. 313, 50 L. Ed. 1046, 26 S. Ct. 652; *California Powder Works v. Davis,* 151 U.S. 389, 38 L. Ed. 206, 14 S. Ct. 350; *Hardin v. Jordan,* 140 U.S. 371, 35 L. Ed. 428, 11 S. Ct. 808.)

Furthermore, assuming that the title or rights claimed herein are of a federal *origin,* such rights are not challenged in the case at bar, but on the contrary, the question relates to a subsequent transfer of such rights.[5] Under such circumstances there is no federal question involved. This Court has repeatedly held that where a title or right as derived from a treaty or the Congress is not challenged or drawn in question, but that the issue is one as to a transfer of such right or title in relation thereto, no federal question is presented to ground jurisdiction for the Supreme Court to review. (*Mace v. Merrill* (Cal.), 199 U.S. 581, 30 L. Ed. 503, 7 S. Ct. 330; *California v. Jackson* (Cal.), 212

[5]Although the deed herein was executed prior to the issuance of the patent but after the decree of confirmation, the patent is deemed to have issued as of the date of the original grant as far as intermediate conveyances are concerned, and inurs to the benefit of "subsequent" grantee. (*United States v. Coronado Beach Co.,* 225 U.S. 472, 65 L. Ed. 736, 41 S. Ct. 376; *Touchard v. Crowe,* 20 Cal. 150; *Crane v. Salmon,* 41 Cal. 63.)

U.S. 233, 28 L. Ed. 712, 5 S. Ct. 113; *McStay v. Friedmann* (Cal.), 92 U.S. 723, 28 L. Ed. 767; *Romie v. Cassanova* (Cal.), 91 U.S. 379, 23 L. Ed. 374; *Poppe v. Langford* (Cal.), 104 U.S. 770, 50 L. Ed. 1123, 80 A.L.R. 439.)

B. Interpretation of Yorba's Intention as Expressed in His Deed to Wolfskill Does Not "Turn Upon a Question of Federal Law".

Petitioners to found a federal question next contend that the Court below "went behind" the confirmatory decree recited in the patent contrary to the decision of *United States v. Flint, et al.,* 25 Fed. Cases 1108, and "imputed a constructive intent to convey eleven leagues of land". (Petition for Writ of Certiorari, pp. 9-13.) In other words, petitioners are asserting that by virtue of the decision in *United States v. Flint, et al., supra,* no court under any circumstances can read anything contained in the patent which precedes that portion thereof containing the recitation of the decree of confirmation of the United States District Court. Such a contention is frivolous and without merit.

First, the case of *United States v. Flint, et al., supra,* does not hold as contended by petitioners. In sustaining a demurrer to the complaint the court held that after issuance of the patent confirming a Mexican grant, the patent is conclusive and immune from attack by the United States seeking to set it aside on grounds of alleged fraud. In conformity with other decisions of this court, *United States v. Flint, et al., supra* reiterated that a patent issued under the Act of Congress, March 3, 1851, declared that the Mexican grant is valid; that the grant is correctly located so as to embrace the prenises as they are surveyed and described

therein; and that such is conclusive against the United States Government and all persons claiming thereunder, and against all persons unable to show a better title. (*Los Angeles Farming and Milling Company v. Thompson,* 180 U.S. 72, 45 L. Ed. 432, 21 S. Ct. 289 [see also 11 Cal. 594]; *De Guyer v. Banning,* 167 U.S. 723, 42 L. Ed. 340, 17 S. Ct. 937.) In addition, such a United States Patent is also conclusive evidence of all recitals contained in the patent between parties thereto and in privity. (*DeGuyer v. Banning, supra.*)

Secondly, as heretofore pointed out, neither the original grant nor the confirmatory proceedings nor the patent title is being attacked or impeached herein by respondent; to the contrary, respondent claims title under the original Mexican grant as confirmed by the patent which was conveyed by Yorba in his deed to Wolfskill. The noteworthy fact that Yorba referred to the property claimed by him in his petition for confirmation as a tract of land "containing four square leagues more or less" is one factor tending to show that the lands of the original Mexican grant as set forth in that petition, are the same lands referred to in his deed to Wolfskill.[6] Both the patent and its confirma-

[6]The question and confusion as to specific quantities of land results from the contention of petitioners that the original grant, the decree of confirmation and the patent are "grants" of a definite quantiy of land of eleven square leagues and that Yorba's deed is a grant of quantity only of four square leagues. Respondent on the other hand, contended the original grant and confirmatory decree and patent and Yorba's deed, are not quantity grants but grants of a specified tract described by specified boundaries. The statement of a quantity MORE OR LESS does not limit the amount of land within those boundaries, but conveys all land within the boundaries. (See *United States v. Hancock,* 133 U.S. 193, 33 L. Ed. 601; *Gragg v. Culp,* 198 Cal. 579.) Futhermore, by reason of Yorba's deed which conveys all

(This footnote is continued on the next page)

tory proceedings and the deed of Yorba are based upon and specifically incorporate by reference this original Mexican grant. Utilization of the petition and the original grant recitals set forth in the patent for the purpose of identifying subject matter or tract in question does no violence to the doctrine of *res judicata.* Under that doctrine, in order to correctly determine what is concluded by the confirmatory decree, it must be ascertained who the parties were to the cause; what were the issues and the subject presented for adjudication and what was decided thereby. (*Baker v. Cummings,* 181 U.S. 117, 45 L. Ed. 776, 21 S. Ct. 578; *Last Chance Mining Company v. Tyler Mining Company,* 157 U.S. 684, 39 L. Ed. 859, 15 S. Ct. 733.)

Thirdly, assuming for the sake of argument that a federal question of *res judicata* is present, such a question was not properly presented to the trial court below for decision, nor was such actually decided by the court nor was such necessary to the decision rendered by the court. The judgment of the trial court and the opinion of the District Court of Appeal specifically hold and determine that "the intention of the parties to the instant deed was to transfer to Wolfskill all the property obtained by Yorba under the Mexican grant to which title had been confirmed by the United States District Court" as determined from the face of the deed itself. (*Ames v. The Irvine Company,* 246 A.C.A. 969, pp. 973-974.) Such a determination affirmed by this state's highest court is final and involves purely a local question of law.

---

right, title and interest in and to the original grant it is really immaterial how the grant or decree of confirmation is characterized. The court held against petitioners' contentions. (See *Ames v. The Irvine Co.,* 246 A.C.A. 969, pp. 975-978.)

In order to give this court jurisdiction to review a state judgment on a writ of error (certiorari), it must appear affirmatively not only that a federal question was presented for decision by the state court, but that its decision was necessary to the determination of the cause and that it was actually decided or that the judgment as rendered could not have been given without deciding it. (*The California Powder Works v. Davis,* 151 U.S. 389, 38 L. Ed. 206, 14 S. Ct. 350; *Sain v. Cypress Creek Drainage District,* 268 U.S. 675, and cases cited therein.)

It is submitted no such federal question is present herein or decided in the case at bar.

Conclusion.

Respondent urges the court to consider the petition, but then to deny the same because:

1. There are no federal questions involved in the within action;
2. The state court did not decide any federal questions;
3. Jurisdiction of this court is lacking to review by certiorari;
4. That the effect of a further hearing in this case would be but to prolong the cloud cast upon the title to large portions of land much to the prejudice of this respondent and to a multitude of third parties, including the United States of America, who hold derivitive titles by mesne conveyances by portions of the tract encompassed by the original patent, which titles have heretofore been clear and marketable.

For the foregoing reasons respondent respectfully requests this court to deny petitioners' application of a Writ of Certiorari.

Respectfully submitted,

WILLIAM L. ANDERSON,

Attorney for Respondent
The Irvine Company.